

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

RALPH HOWARD BLAKELY,

Petitioner,

v.

KENNETH ANTHONY QUINN,

Respondent.

NO. CV-07-316-RHW

**ORDER GRANTING
EXTENSION OF TIME *INTER
ALIA***

Before the Court are Petitioner's Motion for Summary Judgment (Ct. Rec. 14), Respondent's Motion for an Extension of Time (Ct. Rec. 17), Petitioner's Motion for Order of Temporary Removal and Transport (Ct. Rec. 23), and Petitioner's Motions for Appointment of Counsel (Ct. Recs. 26 & 29). These motions were heard without oral argument.

The Court received Petitioner's Petition for Relief under § 2254 on October 9, 2007. He was permitted to proceed *in forma pauperis* and filed the petition on November 2, 2007. After review of the Petition for legal sufficiency, the Court ordered it served on March 10, 2008 (Ct. Rec. 9). The Petition was served by the U.S. Marshal's Service on March 17, 2008, and on March 25, 2008, attorney John Samson entered a notice of appearance on behalf of Respondent. On March 26, 2008, Petitioner filed his motion for summary judgment.

On April 1, 2008, Respondent, in lieu of a response to Petitioner's motion, filed a motion for an extension of time to answer. Respondent notes that the order directing service gives him 45 days to answer the Petition, making the answer due on April 28, 2008. Respondent also submits that to properly respond to a habeas

1 corpus petition he must provide copies of relevant documents from Petitioner's
2 state court proceedings. These court files are necessary to determine whether
3 Petitioner properly exhausted his claims, whether the petition is timely, and to
4 respond to the merits of the claims. Respondent stated that he had not yet received
5 all of the files, and that an extension of time is necessary to obtain the remaining
6 files and to prepare a proper answer to the habeas corpus petition and to
7 Petitioner's motion for summary judgment. Respondent requested an extension
8 until May 28, 2008, to file both the answer to the Petition and a response to the
9 motion for summary judgment. Although the Court recognizes Petitioner's
10 objections to granting such an extension, the Court deems the request reasonable
11 and grants it.

12 Petitioner also filed two motions for appointment of counsel and a motion
13 for temporary removal and transport. In his motions for appointment of counsel,
14 Petitioner states that he is 72 years old and suffers from psychological instability
15 and a deteriorating physical condition. Under 28 U.S.C. § 1915(e), the Court has
16 discretion to designate counsel to represent an indigent civil litigant. This
17 discretion may be exercised only in "exceptional circumstances." *Wilborn v.*
18 *Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986) (citations omitted). The district
19 court must evaluate both "the likelihood of success on the merits" and "the ability
20 of the petitioner to articulate his claims *pro se* in light of the complexity of the
21 legal issues involved." *Id.* It does not appear that the legal issues in this case are
22 so complex that Plaintiff cannot present them *pro se*. Plaintiff has shown an
23 adequate ability to articulate his claims without this Court taking the extraordinary
24 step of appointing counsel to represent him.

25 Mr. Blakely also filed a motion for temporary removal and transport so that
26 he could be present at his hearing for his summary judgment motion. The
27 Constitution does not require the physical presence of the petitioner at every
28 hearing in a habeas corpus proceeding. *Wade v. Calderon*, 29 F.3d 1312, 1325

1 (9th Cir. 1994). This hearing is one that (1) did not actually take place because it
2 was noted *without* oral argument, and (2) will not include issues for which
3 Petitioner's presence will be required. Therefore, the Court denies this motion.

4 Accordingly, **IT IS HEREBY ORDERED:**

5 1. Petitioner's Motion for Summary Judgment (Ct. Rec. 14) is
6 **RESERVED.**

7 2. Respondent's Motion for an Extension of Time (Ct. Rec. 17) is
8 **GRANTED.** Respondent shall file his answer to the Petition and his response to
9 Petitioner's motion for summary judgment on or before **May 28, 2008.**

10 3. Petitioner's Motion for Order of Temporary Removal and Transport (Ct.
11 Rec. 23) is **DENIED.**

12 4. Petitioner's Motions for Appointment of Counsel (Ct. Recs. 26 & 29) are
13 **DENIED.**

14 **IT IS SO ORDERED.** The District Court Executive is directed to enter this
15 Order and forward copies to counsel.

16 **DATED** this 22nd day of May, 2008.

17 *S/ Robert H. Whaley*

18 **ROBERT H. WHALEY**
19 Chief United States District Judge

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